168, in support of its view. In support of the contention that the statute provided for taking property without due process of law, two arguments were advanced: (1) that a tax on sales is really a tax on property and that, therefore, the act, as applied to the shares of a foreign corporation owned by now-residents, is invalid, and (2) the adoption of the face value of the shares as the basis of the tax, renders it invalid. The Court answered the first of these two objections as follows: "A sale depends in fact on the law of the state where it takes place for its validity and, in the courts of that state, at least, for the mode of proof. * * * Therefore the state may make parties pay for the help of its laws, as against the objection." On the second point the Court said that here again equality must yield to practical consideration and usage. The Court also held that the sale which took place was not interstate commerce. In a recent case, the New York Court of Appeals, construing an amendment to the above act, placed its own limits upon the power of the legislature to depart from the actual value of the stock in the assessment of the tax. (See next note.)

TAXATION—VALIDITY OF STOCK TRANSFER TAX—EQUALITY AND UNIFORMITY.—New York Laws 1905, p. 474, c. 241, § 315, which imposes a tax on sales of stock of domestic and foreign corporations of two cents "on each one hundred dollars of face value or fraction thereof," was amended by Laws 1906, p. 1008, c. 414, so as to impose a tax of two cents per share on the sale of all shares of the face value of one hundred dollars, and of all shares of the face value of any fraction thereof. The amendment was *held* unconstitutional. *People ex rel. Farrington* v. *Mensching* (1907), — N. Y. —, 79 N. E. Rep. 884.

The ground of this decision was that there was no basis for the distinction made between sales of shares of different companies—"no difference bearing even a colorable relation to the classification attempted." It seems that the amendment of 1906 differs from the Act of 1905 in the degree of rigor rather than in principle. The amendment was confiscatory in its application to sales of shares of extremely low face value. This case holds that the Act of 1905 was not repealed by the unconstitutional amendment of 1906, and is still in force. (See preceding note.)

VENDOR AND PURCHASER—CONTRACT—BREACH—ACTION.—Contract for sale of lands provided that the vendor was to deliver to the vendee an abstract of title without delay. Plaintiff, in his action for specific performance of the contract of sale, did not allege a refusal to deliver an abstract, but only that no abstract had been delivered. *Held,* that because the contract was dated eight days before the complaint was verified and twelve days before it was personally served, the court will not infer that a reasonable time for delivery had expired. *Cummings* v. *Wilson* (1906), — Minn. —, 110 N. W. Rep. 4.

The majority were of the opinion that they could not so infer and that the plaintiff had not alleged a breach, and therefore the bill was demurrable for a failure to state a cause of action. The dissenting judge was of the opinion that the allegations fairly alleged a demand and refusal, and, in as

much as the contract provided that the abstract should be furnished without delay, it was entirely a matter of defense if the demand for the abstract was made sooner than contemplated. In the United States the furnishing of an abstract is not demandable as a legal right, as it is in England, but by agreement in most sales it is made a condition precedent on the part of the vendor. A failure to furnish upon the day named will put an end to the contract. *Howe* v. *Hutchinson,* 105 Ill. 501. The vendee is not obliged to extend the time, but may demand a return of his deposit on the price. *Williams* v. *Daly,* 33 Ill. App. 454. A vendor agreeing to furnish an abstract within a reasonable time, was held not necessarily bound to furnish one within 35 days, though such a time is fixed under the contract of sale for the first payment by the vendee. *Jackson* v. *Conlin,* 50 Ill. App. 538. There seem to be no cases in the reports in which the term "without delay" has appeared in this connection.

WILLS—PROBATE—FORMER GRANT OF ADMINISTRATION.—After due and regular proceedings, it was held that Wm. H. Mear died intestate and certain administrators were appointed; this administration had never been revoked. Three months later a will of testator's was found and admitted to probate, thus raising the issue as to whether a will may be admitted to probate, and letters testatmentary granted without first obtaining a judgment of annulment of the previous administration. *Held,* that the probate of the will was the proper proceeding, and the letters of administration, of the previous administration, are thereby revoked. *In re Mear's Estate* (1906), — S. C. —, 56 S. E. Rep. 7.

This is a case of first impression in South Carolina, and no line of cases can be found to prove whether annulment or probate is the proper proceeding. The case of *Wallace* v. *Walker,* 37 Ga. 265, is like the case at hand, except that it contains the additional element of fraud. In that case, letters of administration were obtained fraudulently, by representing that the owner of the property died intestate; later a will was found, and in deciding as to the procedure, the court held it was a case for the intervention of chancery. This case is applicable in Georgia and Michigan where chancery has jurisdiction, but not in the rest of the states where the system of courts gives jurisdiction to the probate court. By the Code of Procedure of La., Art. 43, according to *Ellis* v. *Davis* (1883), 109 U. S. 485, there is a special action in cases somewhat similar to the one here, which action is known as Revendication. This is perhaps the only state where a special, peculiar proceeding is provided for. It would seem for the following reasons, supported by text or cases, that the probate proceeding with notice to interested parties is the proper proceedings: (1) When a will is proved it should be admitted to probate. This is an accepted and well known doctrine, and the adoption of the annulment procedure here would destroy this maxim and would virtually mean that the probate of wills would have to be tried by annulment. (2) The probate proceeding, when notice is given to interested parties, is virtually an annulment proceeding, as was seen in *Stackhouse* v. *Berryhill,* 47 Minn. 201, where it was thought the owner of property died intestate, and a